

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
SIXTEENTH JUDICIAL DISTRICT

SEABOARD CORPORATION)
)
PLAINTIFF,)
)
v.)
)
MARSH INC.,)
)
Serve:)
The Corporation Trust Company)
Corporation Trust Center)
1209 Orange Street)
Wilmington, DE 19801)
)
MARSH USA INC.,)
)
Serve:)
The Corporation Trust Company)
Corporation Trust Center)
1209 Orange Street)
Wilmington, DE 19801)
)
and)
)
AMERICAN INTERNATIONAL)
GROUP, INC.,)
)
Serve:)
United States Corporation Company)
2711 Centerville Road, Suite 400)
Wilmington, DE 19808)
)
DEFENDANTS.)

Case No. '09 C V 0 9 4 9 9
3
PETITION PURSUANT TO K.S.A.
CHAPTER 60

JURY TRIAL DEMANDED

ORIGINAL PETITION

Plaintiff Seaboard Corporation states and alleges for its Petition against Defendants, upon knowledge with respect to its own acts and upon information and belief with respect to all other matters, as follows:

CLERK OF DISTRICT COURT
JOHNSON COUNTY, KS
2009 OCT 16 PM 3:24

THE PARTIES

1. Plaintiff Seaboard Corporation (“Seaboard”) is a Delaware corporation with its principal place of business at 9000 West 67th St., Suite 300, Merriam, Kansas 66202. Seaboard is an international agribusiness and transportation company. Seaboard’s businesses include pork production and processing, cargo shipping, commodity trading, flour and feed milling, sugar production and electric power generation. Seaboard employs nearly 6,000 people in the United States and thousands more throughout the world.

2. Defendant Marsh Inc. is a Delaware corporation with its principal place of business at 1166 Avenue of the Americas, New York, NY 10036. Many of the wrongful acts described in this Petition originated and were implemented out of Marsh Inc.’s Global Broking department in New York.

3. Defendant Marsh USA Inc. is a Delaware corporation with its principal place of business at 1166 Avenue of the Americas, New York, NY 10036. Marsh USA Inc. entered into agreements with Plaintiff to provide insurance brokering services.

4. At all relevant times herein, Marsh Inc. and Marsh USA Inc. (collectively, “Marsh”) worked directly with Seaboard through Marsh’s New York, Kansas City and Chicago offices. Marsh is the largest provider of insurance brokerage and consulting services in the world. According to its 2003 financial statement, Marsh’s insurance brokerage business generated annual revenues of over \$6.9 billion.

5. Defendant American International Group, Inc. (“AIG”) is a Delaware corporation with its principal place of business at 70 Pine Street, New York, NY 10028. AIG is a publicly traded company with approximately 86,000 employees and over \$81 billion in annual revenues.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Defendants pursuant to K.S.A. § 60-308(b) because Defendants: transacted business within this State; committed tortious acts within this State; entered into contracts with a resident of this State that were to be performed in whole or in part in this State; and caused injury to Seaboard in this State arising out of acts or omissions outside of the State while Defendants were engaged in solicitation or service activities within the State. AIG also contracted with Seaboard to insure property or risk located within this State. In addition, Defendants have submitted to the jurisdiction of the Courts of this State because of their continuous and systematic contacts with this State.

7. Venue is proper in this Court because, pursuant to K.S.A. § 50-161(b) and § 60-605, Seaboard resides in Johnson County, acts or practices declared to be in violation of the Kansas Restraint of Trade Act occurred in this County, and the causes of action arose in this County. Many of the unlawful acts done pursuant to the conspiracy hereinafter alleged had a direct effect on purchasers of insurance products sold within the State of Kansas and within this County.

8. No portion of this Petition is brought pursuant to federal law. Furthermore, as all parties are Delaware corporations, complete diversity does not exist between the parties.

MARSH'S INSURANCE BROKERING SERVICES

9. Within the insurance brokerage industry, there are three participants. First, there are the clients, like Seaboard, who purchase insurance for their businesses, employees or themselves. Second, there are insurance brokers, like Marsh, who clients hire to advise them as to needed coverage and to find insurance companies that will best provide this coverage. Brokers represent the client, obtain price quotes and present the quotes to the client. Insurance

brokers' recommendations to the client include factors other than price, such as differences in coverage, an insurance company's financial security, or an insurance company's reputation for service or claims payment. Finally, there are the insurance companies, like AIG, that submit quotes to the brokers and, if selected, enter into a contract to provide insurance to that client.

10. Beginning at least as early as 1990, Seaboard hired Marsh to act as its agent and insurance broker for all lines of insurance needed by Seaboard.

11. Marsh held itself out to Seaboard as a trusted expert in insurance brokering.

12. Marsh promised Seaboard that "[w]e will act as your representative to the world insurance market with the objective of presenting to you an insurance placement opportunity which you regard as appropriate considering cost, coverage and continuity. We are first and foremost your representative in this function."

13. Marsh stated that its objective is to "contribute our experience, facilities and energies toward the achievement of your goals." Marsh promised that "[w]e represent you, not the insurance company."

14. Marsh promised Seaboard that "[i]t is our responsibility to negotiate on your behalf with your insurance company and to keep you informed of significant developments in those negotiations which are likely to have a bearing on your insurance program."

15. Marsh promised Seaboard that "we do not speak for and are not bound to utilize any particular insurance company."

16. At all times, Seaboard relied on Marsh's expertise in obtaining potential insurance bids for Seaboard's businesses and Marsh's advice in selecting the ultimate insurance products.

17. Seaboard has continually worked with Marsh's agents and employees in the Kansas City area. Marsh's employees and agents visited Seaboard's headquarters in Merriam, Kansas on a monthly or at least quarterly basis to discuss Seaboard's insurance needs.

18. Beginning in the 1990s, Marsh reconfigured its brokerage business, centralizing power in a group based at its headquarters in New York City. This brokerage group came to be called Marsh Global Broking ("MBG" or "MMGB"), which oversaw policy placement decisions in Marsh's major business lines. From that time on, Seaboard worked with Marsh's agents and employees in the Kansas City area and in New York City, as well as additional Marsh employees in Chicago.

19. Seaboard paid Marsh handsomely for Marsh's expertise and advice. Seaboard paid Marsh an advisory fee or a commission for soliciting insurance bids from multiple insurance companies and for recommending the best insurer for Seaboard's unique needs. On a yearly basis, Seaboard paid Marsh hundreds of thousands of dollars in compensation for the services and expert advice Marsh purportedly provided to Seaboard. In 1996, Marsh's fees were \$385,000. By 2002, Marsh's yearly fee had increased to \$475,000.

MARSH'S CONTINGENT COMMISSIONS

20. Unbeknownst to Seaboard, since at least the mid-1990s, Marsh was not working in Seaboard's best interests but was instead engaged in a comprehensive conspiracy with insurance companies such as AIG to increase the price of insurance paid by clients like Seaboard and deprive Seaboard of receiving insurance from the company that would best fit Seaboard's unique insurance needs at a fair market price.

21. As one part of this conspiracy, Marsh entered into side agreements called contingent commission agreements, "Placement Service Agreements" ("PSAs") or Market

Services Agreements” (“MSAs”) (collectively, the “Agreements”). These Agreements were made with insurance companies like AIG and rewarded Marsh for improperly steering insurance business to complicit and profiting insurance companies. For performing these actions, insurance companies agreed to pay Marsh “contingent commissions.”

22. Under the terms of these Agreements, insurance companies paid Marsh contingent commissions based on factors including but not limited to: (1) how much business Marsh placed with the insurance company; (2) how many of Marsh’s clients renewed policies with the insurance company; and (3) the profitability of the business placed by Marsh.

23. Beginning as early as the 1990s, Marsh and AIG executed these Agreements by which AIG paid Marsh commissions based on how much repeat business Marsh provided to AIG. For example, in 2003, AIG paid Marsh a bonus of 1% on all renewal premiums if its clients renewed with AIG at a rate of 85% or higher; 2% if the rate was 90% or higher; and 3% if the rate was 95% or higher.

24. This business strategy was phenomenally profitable for Marsh. It is estimated that in 2003 alone, Marsh earned approximately \$800 million from contingent commission payments.

25. In order to maximize its benefits under these Agreements, Marsh began creating lists that ranked insurance companies whose products its employees were to encourage clients to purchase. These rankings were not based on the lowest price or the best service Marsh’s client would receive, but on the amount of money the insurance companies would pay Marsh.

26. As a further incentive, Marsh financially rewarded those employees who sold their clients more insurance from these complicit companies, and it chastised those who did not.

27. In February 2002, a Marsh managing director in the Healthcare group provided nine of his colleagues with a list of insurance companies that were paying Marsh pursuant to contingent commission agreements. He cautioned, however, that “[s]ome are better than others,” and said that soon Marsh would formally “tier” the insurance companies. Then, he said, “I will give you clear direction on who [we] are steering business to and who we are steering business from.”

28. A “tiering report” was later circulated to Marsh executives, which listed insurance companies as belonging to tiers depending on how advantageous their contingent commission agreements were to Marsh. The instructions to the Marsh managers who received the list included a direction that they were to “monitor premium placements” to assure that Marsh obtained “maximum concentration with Tier A & B” insurance companies, which were the insurance companies with Agreements most favorable to Marsh.

29. In a September 2003 email, a Marsh executive was even more direct: “We need to place our business in 2004 with those that have superior financials, broad coverage **and pay us the most.**” (emphasis added).

30. Marsh was even more explicit with insurance companies about how the most favorable Agreements and payments would result directly in Marsh selling more of their policies. On November 7, 2003, a Marsh executive recounted in an e-mail how he told the President of ACE USA that she could meet her firm’s sales goals by agreeing to a fatter contingent commission agreement: “I made it clear that if ACE wants us to meet significant premium growth targets then ACE will have to pay ‘above market’ for such [a] stretch. . . .” In addition to carrots, Marsh also used sticks. The notes of one insurance company executive record that

Marsh threatened to “kill” the company if it did not “get to [the] right number” on the contingent commission agreement.

31. Internally, Marsh promoted and rewarded those employees most effective in “moving” clients to insurance companies with contingent commission agreements. For example, in February 2003, a Marsh senior vice president sought to promote an individual in part because the employee successfully moved so many of his clients to an insurance company with a contingent Agreement with Marsh.

32. Marsh failed to fully disclose to Seaboard these Agreements or to accurately characterize the nature of any contingent Agreements with insurance companies. For example, in the June 7, 1996 Brokerage Service Agreement with Marsh, Marsh promised to “disclose commissions received by us to you and will credit such commissions against our compensation hereunder. In the event such commissions exceed our agreed upon compensation hereunder, then excess commissions will be returned to you if permitted by law. Otherwise, excess commissions will be carried forward and applied against our compensation for subsequent years of this agreement.”

33. The July 20, 1999 Client Service Agreement contained almost identical language. Marsh additionally stated: “As used in this paragraph, the term ‘commissions’ does not include payments or allowances by markets contingent upon such factors as the overall book of business placed by Marsh and its affiliates, the performance of that business or the aggregate commissions paid by the market for that book.”

34. In the July 15, 2002 Client Service Agreement, Marsh stated, “we will disclose to you each quarter any commissions received by us and credit them against each quarterly installment [paid by Seaboard]. . . . Such commissions do not include wholesale brokerage fees

or commissions, administrative fees and similar items or payments that we may receive, in accordance with the custom in our industry, under agreements with certain insurers which provide for payments based upon such factors as the overall book of business placed by us and our affiliates, the performance of that book or the aggregate commissions paid for that book.”

35. No where in any of these agreements does Marsh disclose that it was receiving contingent commissions from insurance companies for improperly steering business to these insurers in a manner that maximized the profits to Marsh at the expense of clients like Seaboard.

36. Marsh even took steps to conceal from Seaboard and other clients the full extent of its Agreements with the insurance companies. For example, when insurance company Munich, which had an Agreement with Marsh, disclosed the existence of its contingent commission agreement with Marsh to a significant client to explain what contingent commissions were being passed on to the client, Marsh furiously chastised Munich. A senior vice-president at Munich apologized to Marsh via e-mail: “We acknowledge that this was inappropriate behavior [and will] . . . do the necessary to eliminate all documentation, electronic or otherwise, that references or otherwise alludes to the” contingent commissions.

MARSH AND AIG CONSPIRE TO RIG INSURANCE BIDS

37. In further execution of the conspiracy between and among Marsh, AIG and other insurance carriers, from at least 1998 through at least the end of 2004, Marsh, AIG and other insurance companies engaged in systematic manipulation of bids for insurance, including but not limited to commercial umbrella or excess liability and excess worker’s compensation insurance.

38. When AIG was the incumbent carrier and a policy was up for renewal, Marsh solicited from AIG an “A Quote,” whereby Marsh provided AIG with a target premium and the

policy terms for the quote. If AIG agreed to quote the target provided by Marsh, AIG kept the business, regardless of whether it could have quoted more favorable terms or premium.

39. In situations where another carrier was the incumbent, Marsh asked AIG for what was variously referred to as a “backup quote,” “protective quote” or “B Quote” telling AIG that it would not get the business. In many instances, Marsh provided AIG with a target premium and the policy terms for these quotes. In these cases, it was understood that the target premium set by Marsh was higher than the quote provided by the incumbent, and that AIG should not bid below the Marsh-supplied target.

40. Marsh also facilitated communications between the insurance companies by forwarding allegedly confidential insurance quotes from one insurance co-conspirator to another co-conspirator.

41. Insurance companies like AIG coordinated not only with Marsh but with each other. AIG employee James Spiegel testified that he and others at AIG knew quotes and bids from other insurance companies “through conversations with the brokers at Marsh Global Broking and through conversations with other underwriters at the insurance companies who were protecting AIG.”

42. In the words of AIG employee Jean-Baptiste Tateossian, insurance companies like AIG participated in this scheme to “be protected as the incumbent.” AIG employee John Mohs further described the scheme as a “kind of scratch their back and they will scratch ours.”

43. Defendants’ conspiracy and bid rigging directly impacted Seaboard. For example, from November 30, 2001 to November 30, 2002, Marsh obtained a first-layer, \$50,000,000 umbrella insurance policy for Seaboard from insurer Zurich. Seaboard paid Zurich \$425,000 for that policy. The second layer of insurance was obtained from Kemper for

\$25,000,000, for which Seaboard paid Kemper \$68,750. A third, \$25,000,000 layer of insurance was obtained from Chubb, for which Seaboard paid Chubb \$50,000.

44. Purportedly acting in Seaboard's best interests, Marsh solicited "bids" from multiple insurance companies for the period to begin on November 30, 2002. Marsh then arranged for these insurers to discuss Seaboard's insurance needs with Seaboard at a meeting in New York scheduled to occur on or about November 5, 2002.

45. Seaboard participated in this November 5, 2002 meeting. In attendance at this meeting were the following Marsh employees out of the Marsh New York offices: Greg Doherty, Michael Bauer, Katharina Jamison, and William McBurnie. Mike Granacher and Roy Yancey of the Marsh Kansas City offices were also in attendance. Representing the insurance companies at this meeting were at least Roberta Rudder of Zurich North America Specialties, Elizabeth Emmert of Kemper Insurance Companies and Alex Bynum of AIG.

46. While Marsh intended for Seaboard to believe that these were genuine discussions with insurance companies hoping to be selected by Seaboard, Marsh and these insurance companies had already secretly rigged the outcome. The meeting was simply a ruse for Seaboard's benefit.

47. In actuality, these "bids" were designed to ensure that Zurich kept Seaboard's business on the first layer policy at an inflated price. To accomplish this goal, Marsh conspired with insurers, specifically including AIG, to fulfill this conspiratorial goal.

48. At Marsh's direction, AIG submitted a fake or "B" bid for \$750,000— a 76% increase from what Seaboard paid the year before for insurance coverage. Zurich, which ultimately won Seaboard's business, submitted a bid for \$595,000, which was \$170,000 higher than the year before.

49. On October 25, 2002—more than one week prior to the presentations to Seaboard—an AIG executive, Jean-Baptist Tateossian, confirmed that AIG would not get Seaboard’s business because they were not Seaboard’s current insurer. In a short email to two Marsh employees, Mr. Tateossian stated: “doesn’t look like we are in this one????!?!?!?!?”

50. In confirming the essential purpose of the conspiracy between AIG and Marsh, McNenenny responded on October 28, 2002: “**Sometimes we all have to dance the dance and not go home with the girl.**” (emphasis added).

51. Tateossian then selected AIG underwriter Alex Bynum to provide Marsh with AIG’s fake bid. According to a November 22, 2002 email from Bynum to himself, titled “Seaboard Corporation – New Business Not Taken – Eff 11/30/02,” AIG submitted a bid of \$750,000 for a \$50,000,000 policy that included many exclusions. Seaboard’s then current insurer Zurich submitted a bid for the same policy limits for \$595,000, but with many enhancements or non-exclusions. Writing about AIG’s bid, Bynum said:

This new submission was not a real opportunity for us. Incumbent Zurich was looking to aggressively keep it. ***Broker [Marsh] just asked for us to give a high quote.***

(emphasis added).

52. Ultimately, the scheme between Marsh and insurance companies like AIG worked exactly as hoped: Marsh recommended that Seaboard accept Zurich’s bid and Seaboard renewed with Zurich at a price rigged by Marsh.

53. Because all bids went through Marsh, Marsh was able to police the conspiracy to ensure that all participants were performing their roles as agreed. In the few instances in which a conspiring insurer attempted to cheat, punishment was swift. As AIG employee Karen Radke testified, when a renegade ACE underwriter attempted to circumvent the plan, Marsh employee

Bill Gilman specifically told the AIG employee that “he was going to get [the rogue ACE employee] fired.” When the ACE employee was indeed fired, Marsh took credit for the firing.

**CRIMINAL CHARGES AGAINST MARSH AND AIG ARISING FROM THE
CONSPIRACY**

54. Marsh and AIG’s conduct has resulted in numerous criminal charges, convictions, guilty pleas, and civil settlements related to state and federal investigations.

55. In addition to Seaboard, the list of the victims from Marsh, AIG and their co-conspirators is long and includes some of the largest and most recognizable companies in the United States, including but not limited to: Office Depot; Cingular Wireless LLC; Tyson Foods Inc.; IBM Corporation; Cisco Systems, Inc.; Intel Corporation; Fortune Brands, Inc.; Vivendi Universal, S.A.; 24 Hour Fitness Worldwide, Inc.; Fidelity National Financial, Inc.; State Farm Mutual Automobile Insurance Co.; Spherion Corporation; and Neiman Marcus Group, Inc.

56. On October 14, 2004, the New York Attorney General filed a civil complaint against Marsh alleging that Marsh participated in a bid-rigging scheme with insurance companies including AIG. The complaint further alleges that Marsh designed and executed a plan with insurance companies including AIG by which Marsh was paid more than a billion dollars in contingent commissions to steer insurance business to certain insurance companies and to shield these insurance companies from fair competition.

57. The complaint’s six causes of action include allegations that Marsh, from 2001 to 2004, violated New York’s antitrust statutes; committed fraudulent business practices; and committed fraud.

58. Marsh ultimately settled with the New York Attorney General and established a settlement fund of \$850,000,000.

59. As part of this settlement, Seaboard received documents from Marsh confirming its eligibility to participate in the Settlement. In those documents, Marsh identified more than \$9 million in premiums paid by Seaboard from which Marsh received almost a half million dollars in contingent commissions from insurance companies during this narrow time period. At least 19 different insurance companies are alleged to have paid contingent commissions to Marsh because of Seaboard's business from this narrow time period alone. Because of the extent of Marsh's unlawful conduct and the volume of unlawful commissions, Seaboard opted not to participate in the global settlement and to pursue its own claims.

60. Seaboard and Marsh executed a Tolling Agreement that preserved Seaboard's claims against Marsh related to the allegations detailed in this Petition.

61. Further civil and criminal indictments were filed against more than 20 executives and employees at Marsh and AIG, with similar indictments against additional employees and executives at other conspiring insurance companies.

62. These indictments describe a bid rigging scheme whereby from November 1998 to September 2004, Marsh employees falsely represented to customers that Marsh had solicited bids from insurance companies in an open and competitive bidding process. Specifically, defendants rigged bids by (1) determining which insurance company would win the business; (2) setting a "target" for the predetermined winner to submit its bid; and (3) obtaining "losing bids" from employees at co-conspirator insurance companies. Marsh and the insurance companies referred to losing bids as "B bids," "fake quotes," "bogus quotes," "losing quotes," "bullshit quotes," "back up quotes," "Bs," "B Quotes," "supportive quotes," "alternative leads," "alternatives," "honey," "protective quotes," or "protection." As Marsh and the insurance companies intended, the customer selected the insurance company with the most attractive bid,

unaware that the selection had been fraudulently pre-ordained, and paid premiums, fees and commissions to Marsh and the co-conspirator insurance companies.

63. Many Marsh and AIG employees and executives have pleaded guilty or been convicted of these charges, including some of the persons who participated in meetings with Seaboard.

64. Two indicted Marsh employees, Greg Doherty and William McBurnie, fully participated in the November 5, 2002 meeting with Seaboard during which Seaboard was given fake bids. These two individuals await trial in New York.

65. AIG employee Jean-Baptiste Tateossian, who was directly responsible for procuring the fake AIG bid for Seaboard, pled guilty for his involvement in this bid-rigging scheme.

66. Marsh and AIG have additionally settled civil cases with multiple other states including Connecticut, Florida, Hawaii, Maryland, Massachusetts, Michigan, Oregon, Pennsylvania, Texas and West Virginia.

DEFENDANTS' CONDUCT DIRECTLY HARMED SEABOARD

67. Defendants' conduct harmed Seaboard in multiple ways.

68. Marsh specializes in complex insurance placements where subjective judgment calls have to be made among competitors with varying coverages, financial security and price. Seaboard relied on Marsh to make these calls strictly based on its best interest, without the corrupting influence of incentive payments. Having been steered improperly towards insurers from whom Marsh would financially benefit, Seaboard was deprived of the expertise for which Seaboard paid Marsh.

69. These contingent commissions additionally harmed Seaboard because insurance companies like AIG additionally pass along the cost of these contingent commissions in the form of higher premiums. Therefore, Seaboard was not only paying higher prices for its insurance because of the manipulated bidding process created by Marsh, AIG and others, Seaboard was additionally being harmed by having to pay higher insurance prices to cover the cost of these contingent commissions.

70. Marsh's actions are also inconsistent with statements made to clients like Seaboard about the services Marsh provides to clients. For example, Marsh told Seaboard: "We are first and foremost your representative As such, we do not speak for and are not bound to utilize any particular insurance company. . . . It is our responsibility to negotiate on your behalf with your insurance company and to keep you informed of significant developments in those negotiations which are likely to have a bearing on your insurance program."

71. Marsh, however, failed to inform Seaboard of the true nature of these negotiations and Seaboard therefore made misinformed decisions on insurance coverage under false pretenses because Marsh was providing false and inflated quotes for insurance coverage.

72. Finally, Seaboard was harmed by paying inflated, non-competitive premiums for the insurance it purchased. By way of example only, Marsh has admitted that in certain instances, insurance companies like AIG were prepared to provide more attractive quotes than Marsh had requested. In those instances, insurance companies like AIG were persuaded to provide the falsely inflated quote with the promise that "on the next piece of business we will make sure that [Marsh] slot AIG in that position to win the account."

EQUITABLE TOLLING AND FRAUDULENT CONCEALMENT

73. Throughout the relevant time period, Defendants and their co-conspirators affirmatively and fraudulently concealed their unlawful conduct.

74. Marsh, AIG and their co-conspirators never told Seaboard that they were rigging bids, allocating customers or entering into agreements to pay Marsh for coordinating these activities. Defendants and their co-conspirators conducted their conspiracy secretly, concealed the nature of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection.

75. Defendants and their co-conspirators engaged in a successful conspiracy, which they affirmatively concealed by: (a) meeting secretly to discuss prices, bids and customers of insurance sold in the United States and in this State; (b) using methods of communication in furtherance of the alleged conspiracy that were designed to avoid detection; and (c) agreeing among themselves at meetings and in communications not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in furtherance of their illegal scheme.

76. As a result of Defendants' and their co-conspirators' fraudulent concealment, all applicable statutes of limitations affecting Seaboard have been tolled. Seaboard did not discover, nor could it have discovered through reasonable diligence, that Defendants and their co-conspirators were violating Kansas law. Seaboard could not have discovered the existence of the combination and conspiracy alleged herein at an earlier date by the exercise of reasonable due diligence because of the deceptive practices and techniques of secrecy employed by the Defendants and their co-conspirators to avoid detection and affirmatively conceal such violations.

77. As a result of the fraudulent concealment of the conspiracy, Seaboard asserts the tolling of the applicable statute of limitations affecting the causes of action by Seaboard.

COUNT ONE

**VIOLATION OF THE KANSAS RESTRAINT OF TRADE ACT
K.S.A. § 50-101 ET SEQ.
[All Defendants]**

78. Seaboard re-alleges every paragraph set forth above as if fully set forth herein.

79. From at least 1998 through at least the end of 2004, Marsh, AIG and other unnamed, co-conspirator insurance companies actively engaged in an unlawful arrangement, contract, agreement, trust or combination designed to control and manipulate the cost of insurance and the cost of services provided to Seaboard in violation of K.S.A. § 50-101 and § 50-112 of the Kansas Restraint of Trade Act.

80. Defendants' actions in violation of the Kansas Restraint of Trade Act include, but are not limited to: coordination of the fake bids to be submitted to Seaboard; submission of false and noncompetitive bids to Seaboard; payments to Marsh for coordinating the rigged bids; and the allocation of insurance customers between competitor insurance companies.

81. Marsh orchestrated this conspiracy between and among insurance companies, specifically including Defendant AIG as well as unnamed co-conspirators. In response to Marsh's request, insurance companies including AIG submitted false and noncompetitive bids to Marsh. These bids were designed and rigged to ensure that insurance coverage remained with the insurance companies who currently had this business or in a manner that financially benefitted Marsh or the insurance companies at Seaboard's expense.

82. Defendants affirmatively concealed from Seaboard and the general public the existence of their illegal understanding and agreements through misrepresentations and omissions regarding this conspiracy.

83. As a direct and proximate result of Marsh's conduct, Seaboard purchased insurance at prices higher than it would have paid and on terms that are less favorable than would have been available in a competitive market. The anticompetitive effect of Defendants' illegal arrangements, contracts, agreements, combination and conspiracy was to distort and artificially inflate the prices that Seaboard paid for insurance. Defendants' actions further restrained and controlled the full and free competition in the market for insurance.

84. Seaboard thereby suffered loss, injury and damage in an amount greater than \$75,000, according to proof at trial.

85. Pursuant to K.S.A. § 50-115, Seaboard seeks the full consideration paid by Seaboard for Marsh's services. Seaboard further seeks the full consideration paid by Seaboard for all insurance Seaboard purchased through Marsh.

86. Pursuant to K.S.A. § 50-108 and § 50-161, Seaboard further seeks to recover treble the damages sustained by Seaboard as a result of Defendants' conduct, as well as attorneys' fees, costs and any additional remedies provided by law.

COUNT TWO

FAITHLESS SERVANT [Marsh Defendants Only]

87. Seaboard re-alleges every paragraph set forth above as if fully set forth herein.

88. As Seaboard's insurance broker, Marsh was Seaboard's fiduciary and owed Seaboard the duties of loyalty and utmost good faith.

89. Marsh breached those duties by coordinating false insurance bids; misrepresenting or omitting material information regarding the bids received by Marsh and the bidding process; self-dealing and receiving secret profits through this self-dealing; and depriving Seaboard of the full benefits of Marsh's knowledge and skill.

90. Marsh's faithlessness permeated and tainted the entire relationship with Seaboard and cast doubt on all advice Marsh provided to Seaboard as to how Seaboard could best and most cost effectively satisfy its insurance needs and the bids received by Marsh.

91. As a direct and proximate result of Marsh's conduct, Seaboard has suffered loss, injury and damage in an amount greater than \$75,000, according to proof at trial.

COUNT THREE

FRAUD [Marsh Defendants Only]

92. Seaboard re-alleges every paragraph set forth above as if fully set forth herein.

93. To induce Seaboard to enter and continue a brokering relationship with Marsh, Marsh made materially false statements to Seaboard, including but not limited to that: Marsh was working for Seaboard and in its best interests, not the insurance companies; Marsh would obtain fair and market-driven bids from insurance companies; and Marsh would negotiate and implement cost-effective insurance solutions for Seaboard's unique insurance needs.

94. Marsh knew these statements were untrue when they made them. Marsh made these statements to Seaboard with the intention to deceive or with reckless disregard for the truth.

95. In addition to or in the alternative, Marsh omitted material facts from Seaboard, including but not limited to that: Marsh was being compensated by insurance companies to steer business to specific insurers; and Marsh directly solicited false bids from insurance companies.

96. Seaboard justifiably relied on Marsh's statements and omissions in entering into its relationships with Marsh and in deciding to continue its relationship, a relationship that was to Seaboard's detriment.

97. As a direct and proximate result of Marsh's conduct, Seaboard has suffered loss, injury and damage in an amount greater than \$75,000, according to proof at trial.

COUNT FOUR

NEGLIGENT MISREPRESENTATION [Marsh Defendants Only]

98. Seaboard re-alleges every paragraph set forth above as if fully set forth herein.

99. As detailed above, the Marsh Defendants, in the course of their business, made false statements and representations to Seaboard.

100. Marsh's false statements and representations were made based upon Marsh's own knowledge or were negligently made by Marsh without actual knowledge as to whether the statements and representations were true or false and without Marsh having reasonable grounds to believe that they were true.

101. The Marsh Defendants failed to exercise reasonable care or competence in obtaining or communicating the information to Seaboard.

102. At the time Marsh made these representations, Plaintiff did not know the truth, but justifiably and reasonably believed and relied on Marsh's representations and statements to be true. Seaboard thereby entered into and continued a brokering relationship with Marsh and entered into insurance relationships based upon Marsh's recommendations and representations, all of which were to Seaboard's detriment.

103. As a direct and proximate result of Marsh's conduct, Seaboard has suffered loss, injury and damage in an amount greater than \$75,000, according to proof at trial.

COUNT FIVE

**BREACH OF THE IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING
[Defendant Marsh USA Inc.]**

104. Seaboard re-alleges every paragraph set forth above as if fully set forth herein.

105. As a result of its contractual relationship with Seaboard, Marsh USA Inc. owed Seaboard a duty of good faith and fair dealing.

106. Marsh breached this implied duty by intentionally and purposefully engaging in conduct that had the effect of destroying or injuring Seaboard's rights to receive the benefits expected under the contract with Marsh, including but not limited to securing insurance that would best meet Seaboard's needs at the best available price. Marsh's conduct was additionally unfaithful to the purpose of the contract, which was to provide Seaboard unbiased advice on the best insurance for Seaboard's unique needs. Marsh also breached this implied duty by acting in bad faith and acting outside the scope or range of accepted commercial practices by prioritizing Marsh's needs above those of Seaboard.

107. As a direct and proximate result of Marsh's conduct, Seaboard has suffered loss, injury and damage in an amount greater than \$75,000, according to proof at trial.

COUNT SIX

**BREACH OF CONTRACT
[Defendant Marsh USA Inc.]**

108. Seaboard re-alleges every paragraph set forth above as if fully set forth herein.

109. Seaboard fully executed Brokerage Service Agreements and Client Service Agreements with Marsh, whereby Marsh promised to provide certain services and benefits to Seaboard.

110. In return, Seaboard compensated Marsh in consideration for these services.

111. For the reasons discussed herein, Marsh breached these contracts by failing to provide all of the services required in the contract, including but not limited to: failing to secure insurance that would best meet Seaboard's needs at the best available price; failing to provide unbiased advice on the best insurance for Seaboard's unique needs; failing to represent the interests of Seaboard rather than the interests of Marsh and insurance companies; and failing to keep Seaboard accurately informed of significant developments in the negotiation and bidding for Seaboard's insurance business.

112. As a direct and proximate result of Marsh's conduct, Seaboard has suffered loss, injury and damage in an amount greater than \$75,000, according to proof at trial.

COUNT SEVEN

**TORTIOUS INTERFERENCE WITH A PROSPECTIVE BUSINESS ADVANTAGE
OR RELATIONSHIP
[All Defendants]**

113. Seaboard re-alleges every paragraph set forth above as if fully set forth herein.

114. Seaboard had prospective business relationships with insurance companies who would provide insurance to Seaboard.

115. Defendants knew of Seaboard's expectation that it would enter into a prospective business relationship with the insurance company that submitted the most reasonable bid and best fit Seaboard's insurance needs.

116. But for the conduct of Defendants, Seaboard was reasonably certain to have received legitimate insurance bids and would have entered into a relationship with the insurance company with the best bid that best met Seaboard's needs.

117. Defendants intentionally and maliciously interfered with this prospective expectancy by submitting and coordinating false bids, misrepresenting the nature of the bids and interfering with the bidding process.

118. As a direct and proximate result of Defendants' actions, Seaboard has suffered loss, injury and damage in an amount greater than \$75,000, according to proof at trial.

COUNT EIGHT

CIVIL CONSPIRACY [All Defendants]

119. Seaboard re-alleges every paragraph set forth above as if fully set forth herein.

120. Defendants sought and agreed to jointly act against Seaboard with the intent of preventing Seaboard from receiving legitimate insurance bids, preserving the allocation of insurance business between and among specific insurance companies and to ensure the attainment of higher insurance rates.

121. Defendants' agreed upon objective was to intentionally and specifically damage Seaboard by causing Seaboard to overpay for insurance.

122. Defendants conspired to commit and committed a variety of unlawful and independently tortious acts to accomplish this objective, including, among other things, the overt acts alleged herein that form the basis for Seaboard's claims against Defendants for tortious interference with Seaboard's prospective business advantage or relationships and violations of state law. In addition, the Marsh Defendants committed the overt acts alleged herein that form the basis for Seaboard's claim for Faithless Servant, Fraud, Negligent Misrepresentation and, in the case of Defendant Marsh USA Inc., Breach of the Implied Duty of Good Faith and Fair Dealing and Breach of Contract. Such overt acts were undertaken by Defendants in furtherance of Defendants' agreement to intentionally and specifically damage Seaboard.

123. As a direct and proximate result of Defendants' actions, Seaboard has suffered loss, injury and damage in an amount greater than \$75,000, according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Seaboard Corporation respectfully demands:

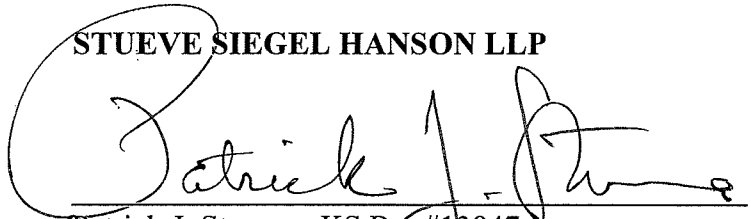
1. That the Court declare, adjudge and decree that Defendants have committed the violations of state law alleged herein; and
2. That the Court award damages sustained by Seaboard in an amount to be proved at trial, to be trebled according to law, plus interest, including prejudgment and post-judgment interest, attorneys' fees and costs of suit, and such other and further relief as this Court may deem just and proper.

JURY DEMAND

A jury trial is demanded on all triable issues.

Respectfully submitted,

STUEVE SIEGEL HANSON LLP

A handwritten signature in black ink, appearing to read "Patrick J. Stueve", is written over a horizontal line. The signature is stylized and cursive.

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